

AGREEMENT FOR SERVICES AND COOPERATIVE ECONOMIC ENDEAVOR BY AND BETWEEN
THE REGIONAL TRANSIT AUTHORITY AND
THE NEW ORLEANS TOURISM MARKETING CORPORATION

This agreement ("Agreement") is made and entered into this 1st day of June, 2000, by and between the Regional Transit Authority ("RTA") herein represented by Robert Tucker, Chairman of the Board of Commissioners of the RTA, acting pursuant to Resolution No. 20-032 of its Board of Commissioners, duly adopted on May 31, 2000 and attached hereto as Exhibit A, and the New Orleans Tourism Marketing Corporation ("NOTMC"), appearing herein through Sandra Shilstone, its Executive Vice President and Director of Marketing, acting pursuant to a duly-adopted resolution of its Board of Directors adopted on May 25, 2000 and attached hereto as Exhibit B.

R E C I T A L S :

A. WHEREAS, the Regional Transit Authority ("RTA") was created for purposes defined in La. R.S. 48:1652 and 1654 B, which provide as follows:

§ 1652. Declaration of policy

The area comprising the parishes of Orleans, Jefferson, St. Tammany, St. Bernard, and other parishes, has developed and continues to develop into a metropolitan area with a common interest in the cultural, social and economic well-being of the people therein and the development of the educational, commercial, and industrial resources thereof. There exist in this metropolitan area serious traffic conditions and congestions and serious mass transportation problems which impede and will increasingly impede the development of these common interests toward their fullest potential. Concerted governmental action is needed to alleviate such traffic conditions and congestion, correct deficiencies in mass transportation, coordinate and balance the transportation facilities operating therein, and otherwise provide a sounder basis for the development of traffic patterns and control. The development of a mass transportation system through a joint

instrumentality of the local governments within the metropolitan area is a reasonable approach to the aforesaid needs and problems. The cultural, social, and economic well-being of the people in the metropolitan area and the development of the educational, commercial, and industrial resources thereof are matters of public interest and concern throughout the state. Accordingly, it is the public policy of this state, as a matter of public health, safety, convenience, and welfare, to promote the establishment of such a joint instrumentality, encourage participation therein by the local governments involved, facilitate the accomplishment of its purposes, and bring about solutions to the aforesaid needs and problems.

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§1654. Creation, organization, and purpose

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B. The purpose for which the authority is created is to plan, design, lease as lessee, purchase, acquire, hold, own, construct, improve, have an equity in, finance, maintain, and administer a transit system within the metropolitan area to operate same or contract therefore, lease as lessor same for operation by private parties.

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B. WHEREAS, the Louisiana Legislature has conferred broad powers upon the RTA and its Board of Commissioners, including the powers conferred by La. R.S. 48:1651 et. seq., particularly La. R.S. 48:1656; and

C. WHEREAS, the New Orleans Tourism Marketing Corporation ("NOTMC") is a non-profit Louisiana economic development corporation, duly organized and existing pursuant to the *Louisiana Cooperative Economic Development Law* (La. R.S. 33:9020 et seq.), which, pursuant to its purpose successfully works and endeavors cooperatively with various public and

private members of the tourism, hospitality and convention industries, as well as the City of New Orleans, to plan, furnish and provide needed services to market and promote the City of New Orleans as a convention and tourist destination, to encourage the construction of new facilities and the expansion of existing facilities, to stimulate and enhance the economy of the City of New Orleans and thereby reduce conditions of economic distress within the City of New Orleans; and

D. WHEREAS, NOTMC has an established and demonstrated record of high performance as a tourism and convention promotion agency, and by virtue of its contacts, purpose, public and private cooperative endeavors, and experience, including the proven ability to analyze, interpret, and utilize appropriate marketing research, to develop and implement innovative and sound marketing approaches, to develop and implement marketing plans, marketing strategies, and budgets for production and media placement, to engage advertising agencies or other subcontractors, to oversee the work of advertising agencies and any other subcontractors, to render considered decisions on creative product, budgets, production, media placement, and promotions, to monitor the effectiveness of marketing campaigns and make adaptive changes, as appropriate, to advise and assist on the marketing of festivals, historic events or special or unique features, and other matters, while maintaining positive and effective communication and cooperation with the City and interested members of the tourism and hospitality industries concerning marketing goals and results, and by continuing ongoing informative and public relations efforts to keep the public aware of the special and unique features, facilities, and benefits of New Orleans and its people; and

E. WHEREAS, tourists, conventioners, trade show participants, and the public need for safe, efficient, dependable, and reliable transportation, including the planning, implementation, and marketing of such transportation, in order to allow for ease of transportation between the many attractions and facilities offered by the City of New Orleans, to reduce traffic, wear on roads, air pollution, and the use of valuable hotel, trade show, and convention center properties for parking of vehicles; and

F. WHEREAS, the RTA presently maintains and operates the City's historic streetcar lines and the Riverfront streetcar lines, which serve as both tourists attractions as viable means of clean and reliable transportation, and the RTA is currently seeking to expand and develop light rail facilities needed to augment and further expand transit services to the region; and

G. WHEREAS, the RTA and NOTMC, pursuant to their purposes and authority, can and should jointly plan and contribute to the economic development of the City of New Orleans and the metropolitan area, and cooperatively endeavor through long-term planning and implementation to meet the needs of both local and visiting transit users; and

H. WHEREAS, in 1990 the City of New Orleans enacted and levied a hotel occupancy privilege tax by Ordinance No. 14138 Mayor Council Series, in order to provide the City with revenues needed to provide funds for cooperative economic development of the City's tourism, convention and hospitality industries through cooperative endeavors with NOTMC, and NOTMC has endeavored, worked cooperatively with various public and private entities, and performed services for the past decade in exchange for and consideration

of payments made by the City for the public purpose of promoting economic development and marketing the City and its attractions; and

I. WHEREAS, enhanced cooperation between the RTA and the tourism and convention industry and the various economic development and tourism and convention promotion agencies in New Orleans, both public and private, will further the mission of the RTA by promoting economic development in the region, in particular, development of the regional tourism and convention industry, by enhancing the ability of the RTA to secure federal and state funding for capital improvements, by facilitating the ability of the RTA to serve visitors and the tourism and convention industry workforce, and by promoting in the long term an increase of RTA revenues through both its sales and use tax and fare box collections by increasing the volume of sales-taxable transactions and increasing visitor utilization of RTA transit services; and

J. WHEREAS, local music and entertainment, locally-produced or filmed motion pictures, local culture, and/or the RTA's historic landmark street railways and proposed new light rail services should play a featured role in local tourism and convention development activities; and

K. WHEREAS, the Ernest N. Morial New Orleans Exhibition Hall Authority ("ENMNOEHA"), is a political subdivision of the State of Louisiana, established by Act 305 of 1978, as amended, which constructed, owns and oversees the operation of the world class Ernest N. Morial Convention Center-New Orleans (the "Convention Center") along the Mississippi River and adjacent to the Rail Corridor and Riverfront Streetcar line, and which utilizes hotel-motel taxes to retire bonded indebtedness for the construction and expansion of

the Convention Center and its two major expansion projects necessitated since its opening in 1985 in order to allow the facility to accommodate growing demand; and

L. WHEREAS, ENMNOEHA is presently planning a fourth phase expansion of the Convention Center ("Phase IV"), in order to allow the facility to continue to accommodate growing demand and remain competitive with the country's larger convention centers; and

M. WHEREAS, NOTMC's governing Board of Directors is comprised of persons nominated or appointed by the Greater New Orleans Hotel and Motel Association, (the "Hotel Association"), the New Orleans Metropolitan Convention and Visitors Bureau (the "CVB"), the Louisiana Restaurant Association (the "Restaurant Association"), the City of New Orleans (the "City"), and other private and public entities, and NOTMC is well situated to foster cooperation among the City, ENMNOEHA, the Hotel Association, the CVB, the Restaurant Association, for-profit hotel operating companies, the RTA, the Louisiana Stadium and Exposition District, the Louisiana Department of Culture, Recreation and Tourism, the New Orleans Film and Video Commission, the New Orleans Music and Entertainment Commission, the Mayor's Office of Tourism and Arts, the Greater New Orleans Multi-Cultural Tourism Commission, and other entities, public and private, with a role to play in development of tourism, convention, transportation, and related industries; and

N. WHEREAS, the RTA is involved in certain litigation pending in the Civil District Court for the Parish of Orleans, State of Louisiana, bearing docket No. 99-11874 "T", (the "Mandamus/Declaratory Suit"), concerning the enforcement and collection of the existing RTA sales and use tax as applied pursuant to La. R.S. 47:301(14)(a) to the furnishing of hotel sleeping rooms in Orleans Parish (the "RTA Tax (Hotels)"); and

O. WHEREAS, the Mandamus/Declaratory Suit was filed on July 22, 1999. On July 29, 1999 the CVB, the Hotel Association, the Restaurant Association, and various individual hotels intervened into the Mandamus/Declaratory Suit, which was well publicized in the newspaper, electronic news media and the subject of much discussion throughout the hospitality industries of the City of New Orleans. Following various motions and rulings in the suit, research, education, discussion, conflict and ultimately, cooperation, a number of intervening parties withdrew or dismissed their claims in intervention so as not to retard the resolution of the Mandamus/Declaratory Suit, NOTMC has intervened or will intervene into the litigation due to its interest in the lawful outcome of the suit and in the execution of this Agreement, and other parties, including numerous hotels and the Hotel Association, have determined to remain actively involved in the lawful resolution of the litigation until the entry of a Final Judgment in the Mandamus/Declaratory Suit; and

P. WHEREAS, all of the remaining parties to the Mandamus/Declaratory Suit including the original Plaintiff, RTA, Defendants, Maria Kahn, in her official capacity as Director of Finance of the City of New Orleans and Courtland Crouchet, in his official capacity as collector or revenue of the City of New Orleans, and Intervenor, NOTMC, the Hotel Association and its privies, and the individual hotels the Days Inn/New Orleans, Doubletree Hotel New Orleans, Embassy Suites Hotel New Orleans, Four Points Hotel, Hilton New Orleans Riverside, Holiday Inn Select, The Inn on Bourbon, Maison Dupuy Hotel, Provincial Motels, Inc., Radisson Hotel New Orleans, The Warwick Corporation d/b/a Comfort Inn Downtown, Windsor Court Hotel, and Wyndham Riverfront Hotel (collectively the "Intervening Hotels"), have filed (or will jointly file) a Motion for Final

Judgment and Decree, in order to amicably resolve and lawfully terminate the Mandamus/Declaratory Suit through the entry of a considered Final Judgment and Decree (the "Final Judgment"); and

Q. WHEREAS, RTA's one (1%) percent general sales and use tax as applied to the occupancy and/or furnishing of sleeping rooms in hotels in Orleans Parish that will be collected following the entry of the Final Judgment in resolution of the Mandamus/Declaratory Suit is predicted to add initially between \$6,000,000 and \$7,200,000 per year to the RTA's annual sales and use tax revenues. That portion of the RTA's one (1%) percent general sales and use tax approved by the electors in 1985 which applies to the occupancy and/or furnishing of sleeping rooms in hotels in Orleans Parish following the resolution of the Mandamus/Declaratory Suit (said portion initially estimated at between \$6,000,000 to \$7,200,000 per year) is hereinafter referred to as the "RTA Tax (Hotels)"; and

R. WHEREAS, NOTMC and the RTA mutually acknowledge the importance of the hospitality, convention and tourism industries as major and significant factors of the New Orleans economy, and the many relationships between and interdependence of the need for accessible and adequate public transportation and the tourism and hospitality industries, including but not limited to: (i) the need for reliable public transportation by hospitality industry workers to get to and from their places of employment, (ii) the need for a punctual and reliable work force to serve and satisfy visiting tourists and conventioners, (iii) the direct relationship between the pleasurable experience of visiting tourists and conventioners and the probability that they will return to the City again in the future, (iv) the transportation needs of visiting tourists and conventioners while visiting the City, (v) the uniqueness of the

historic streetcars and the proposed light rail system(s) as tourist attractions and viable means of needed transportation, (vi) the significant economic impact of returning tourists and conventioners, (vii) the long term planning required for the construction of transportation facilities and the hosting of major conventions and trade shows, (viii) the operation of the Convention Center at an operational deficit due to competition from other cities and the need to charge competitive rates for Convention Center bookings and services, (ix) the need to fund the proposed Phase IV expansion of the Convention Center in order keep the facility competitive and to allow the facility to continue to host ever growing trade shows and associations, (x) the direct relationship between tourism and convention bookings and hotel occupancy, demand, and expansion, (xi) the relationship between increased tourism and convention bookings and the increased transportation needs of visiting attendees, hospitality workers, and construction workers, (xii) the direct relationship between increased tourism, and increases in the sales and use taxes, including the RTA Tax (Hotels), and the corresponding relationship upon the funding of public transportation instrumentalities, ENMNOEHA's bonded indebtedness and needed Convention Center expansion, and (xiii) the need to obtain federal funds and other sources of funding the construction of light rail or other means of public transportation.

AND NOW, in consideration of the foregoing, and in order to provide cooperatively for the improvement of transit, the enhanced integration of tourist, hospitality and convention related activities and transit and transit-related activities, additional tourism, hospitality and convention and trade show attendance through expanded facilities, marketing, transportation planning, and re-investment in further revenue-development transit-related

activities; and in furtherance of their purposes and the public interests, the RTA and NOTMC do hereby agree and bind themselves, each to the other, as follows:

I.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Additional Portion" has the meaning ascribed to it in Section 5.1 D 3 hereof.

"Agreement" means this Agreement for Services and Cooperative Economic Endeavor Agreement By and Between the Regional Transit Authority and the New Orleans Tourism Marketing Corporation.

"Annual Fee" has the meaning ascribed to it in Section 5.1 D 1 hereof, and is comprised of the Primary Portion and Additional portion, if any, payable by RTA to the NOTMC during each Contract Year.

"Contract Year" has the meaning ascribed to it in Section 5.1 D 4 hereof.

"Convention Center" has the meaning ascribed to it in paragraph K of the Recitals.

"Cultural Entities" has the meaning ascribed to it in Section 4.1 F. hereof.

"CVB" has the meaning ascribed to it in paragraph M of the Recitals.

"ENMNOEHA" has the meaning ascribed to it in paragraph K of the Recitals.

"ENMNOEHA-Transit Fund" has the meaning ascribed to it in Section 4.2 hereof.

"Expansion Payment" has the meaning ascribed to it in Section 4.2 hereof and is equal to fifty (50%) percent of the Annual Fee payable by the RTA to NOTMC hereunder.

"Final Judgment" has the meaning ascribed to it in paragraph P of the Recitals.

"Interim Fund" has the meaning ascribed to it in Section 4.2 hereof.

"Intervening Hotels" has the meaning ascribed to it in paragraph P of the Recitals.

"Hotel Association" has the meaning ascribed to it in paragraph M of the Recitals.

"Jazzland" means that certain amusement park and public attraction in New Orleans East, which opened to the public on May 20, 2000.

"Mandamus/Declaratory Suit" has the meaning ascribed to it in paragraph N of the Recitals.

"NOTMC" means the New Orleans Tourism Marketing Corporation, a non-profit, economic development corporation organized under the Laws of Louisiana and a party to this Agreement.

"Phase IV" has the meaning ascribed to it in paragraph L of the Recitals.

"Phase IV Escrow Fund Agreement" has the meaning ascribed to it in Section 4.2 hereof.

"Primary Portion" has the meaning ascribed to it in Section 5.1 D2 hereof.

"Restaurant Association" has the meaning ascribed to it in paragraph M of the Recitals.

"RTA" means the Regional Transit Authority a governmental entity existing under the Laws of Louisiana and a party to this Agreement.

"RTA Tax (Hotels)" has the meaning ascribed to it in paragraph Q of the Recitals.

II.

REPRESENTATION AS TO CAPACITY AND AUTHORITY

2.1 Capacity. Each party represents and warrants that it has full capacity and power and has obtained all authorizations and consents necessary for it to enter into this Agreement.

III.

COOPERATIVE ENDEAVOR

3.1 Cooperative Economic Endeavor. This Agreement shall constitute an agreement for services and a cooperative endeavor agreement entered into pursuant to the authorization of La. Const. (1974), Article 6, Section 20 and Article VII, Section 14(C) and other applicable

law , and the provisions hereof shall mutually bind and obligate RTA and NOTMC to fulfill all of the covenants, commitments, and obligations agreed upon and set forth herein.

3.2 Mutual Cooperation. The parties acknowledge that the RTA has a unique, immediately-imminent opportunity to obtain significant federal funding for the proposed Canal Street streetcar and will have additional opportunities in the future to obtain federal funding for other light rail expansion and/or restoration projects, which will further the many interests of the hospitality and transportation industries, provided that the RTA can contribute and furnish basic funding. The parties also acknowledge that time is of the essence with respect to the RTA's ability to obtain such federal funds. In furtherance of this cooperative endeavor, the RTA has dedicated a sum each year equal to that portion of its general sales and use tax revenues described herein as the RTA Tax (Hotels), to the development, repair, and maintenance of its streetcar and/or light rail projects and related purposes including its obligations under this Cooperative Endeavor Agreement, as provided in Section 5.1C hereof, and NOTMC has agreed to dedicate a sum equal to fifty (50%) percent of the Annual Fee actually received from the RTA hereunder to the ENMNOEHA-Transit Fund, as provided in Section 4.1 hereof. NOTMC and the RTA agree to cooperate with each other during the term hereof in order to promote and implement the convention-tourism-hospitality-industry and transit and transit-related public purposes, goals, objectives, terms and conditions hereof, specifically including the need to perform all acts and do all things on a timely basis which are reasonably necessary for the RTA to secure federal funding for proposed streetcar and/or light rail projects.

3.3 Cooperation with Others. In addition to cooperating with each other, NOTMC and the RTA agree to cooperate with ENMNOEHA, the City, and other interested or concerned entities, both public and private, in order to implement the hospitality, convention and tourism industry and transit and transit-related public purposes, goals, and purposes hereof. Without detracting from said duty of cooperation, the parties declare there are no parties to this Agreement other than the New Orleans Tourism Marketing Corporation and the Regional Transit Authority. Except as expressly provided in Sections 4.2, 4.3 and 4.4 hereof, nothing in this Agreement shall be construed as a stipulation *pour autrui* or as creating the status of a third-beneficiary.

3.4 Further Agreements. NOTMC and the RTA acknowledge that additional agreements which are consistent with the purposes, terms and conditions hereof may or shall be required during the term hereof, including but not limited to the agreements which relate to the establishment and utilization of the ENMNOEHA-Transit Fund as provided in Section 4.2 hereof, and the parties agree to endeavor cooperatively to finalize any such additional documents as may be reasonably required to effectuate the purposes, terms and conditions hereof.

3.5 Non-Effect on NOTMC's Other Funding. NOTMC and the RTA acknowledge that the NOTMC has successfully operated to market and advertise the City of New Orleans for convention, hospitality and tourism-related public purposes for the past 10 years, based upon annual funding by payments from and budgets approved by the City of New Orleans, and that NOTMC's past and present operations are based upon such budgets and funding by the City. Although the Annual Fee received hereunder by NOTMC may be included in one

or more budgets approved by the City of New Orleans, the NOTMC and RTA acknowledge and agree that neither this Agreement, nor the payments received or to be received by NOTMC hereunder shall affect, reduce, or abate NOTMC's other funding in any way, and that all payments made to NOTMC by the RTA hereunder shall be deemed additional funding to NOTMC, as payment for the services to be rendered by NOTMC hereunder, and to be used for the purposes set forth herein.

The parties acknowledge that the City, a party to the Mandamus/Declaratory Suit through its Director of Finance and its Collector of Revenue, is a separate and distinct legal entity from the RTA, and that the RTA has no power or authority to cause the City to increase, decrease, or otherwise modify the City's funding of NOTMC. The parties further acknowledge that: (i) the City has been apprised of the planned execution of this Agreement and has been furnished with a copy hereof, in final form, prior to the execution thereof, (ii) a copy of this Agreement is or shall be attached as Exhibit I to the Final Judgment, submitted by Joint Motion by the City and all other parties to the Mandamus/Declaratory Suit for entry, and (iii) the City has accepted the terms and provisions of this Agreement in connection with the resolution and/or settlement of the Mandamus/Declaratory Suit, and has not made any suggestions or representations whatsoever that NOTMC's funding by the City might be reduced or adversely affected in any way as a result of the payments to be made by the RTA hereunder. This Agreement is completely separate and distinct from NOTMC's agreements, relationships or funding by the City. Accordingly, no increase, decrease, or other modification of the City's funding of NOTMC shall have any effect whatsoever on the payments to be made by the RTA to NOTMC hereunder or on the validity or enforceability

of this Agreement, and the RTA may not be held accountable or responsible therefore, unless caused by the fault of the RTA, in violation of the acknowledgments, warranties, representations or provisions contained herein. Notwithstanding anything contained to the contrary in this Section 3.5, any action taken by the City to modify NOTMC's funding not caused by the fault of either party hereto shall not constitute a breach of this agreement.

IV.

OBLIGATIONS OF NOTMC

4.1 In consideration of the payments to be made by the RTA to NOTMC hereunder, NOTMC shall perform the following services:

- A. Augment or expand existing tourism marketing activities, and/or initiate new tourism marketing activities in such ways as are likely in the long term to increase the number of tourists, trade show and/or convention attendees, visitors, and/or local utilization of RTA transit services, and/or increased RTA sales and use tax revenues, including but not limited to revenues resulting from the collection of the RTA Tax (Hotels).
- B. Include reasonable attention to the RTA's Riverfront, St. Charles, and other historic and/or restored or expanded streetcar lines in tourism and convention promotions, whenever reasonably feasible and/or appropriate under the circumstances.
- C. Consult with the RTA as needed or requested regarding information or promotions of RTA's transportation services to the City's tourist.

attractions, tourists or transportation related facilities, or related areas of interest, such as the Convention Center, New Orleans East/Jazzland, the Airports, Union Passenger Terminal, the New Orleans Museum of Art, City Park, the Cemeteries, and/or the Florida Parishes, and coordinate its own promotions with those of the RTA, whenever reasonably feasible and/or appropriate under the circumstances.

- D. Cooperate with and actively assist the RTA and other agencies, public and private, in an on-going effort to secure federal, state, and other funding for development, preservation, and maintenance and capital improvements of existing and proposed streetcar and light rail projects, including but not limited to light rail service to New Orleans East and Jazzland, the Airports, Union Passenger Terminal, the New Orleans Museum of Art and City Park, the Cemeteries, and/or the Florida Parishes, whenever reasonably feasible and/or appropriate under the circumstances.
- E. Promote appropriate use of RTA services by tourists, convention-goers and/or convention organizers whenever reasonably feasible and/or appropriate under the circumstances.
- F. Promote the development of the tourism industry by giving due attention and appropriate funding, as limited below, to marketing activities to locally-connected films and music and local culture, with due attention especially to those artistic and cultural expressions that are

related to, feature, or which incorporate significant references to the historic streetcar systems and/or other public transportation systems whenever reasonably feasible and/or appropriate under the circumstances. In recognition of the interrelationships between local culture, tourism, films, music, transportation, tourism marketing, and hotel occupancy, and in furtherance of the objectives and cooperative goals of this Agreement, the parties agree that NOTMC shall dedicate, pay-over, or expend funds in support of the activities of the New Orleans Film and Video Commission, the New Orleans Music and Entertainment Commission, and/or the Mayor's Office of Tourism and Arts (collectively the "Cultural Entities"), from the Annual Fee paid by the RTA to NOTMC hereunder, provided that: (i) the total amount paid in any Contract Year from the Annual Fee to one or more of the Cultural Entities shall not exceed a total sum equal to 3.45% of the Annual Fee, and (ii) NOTMC shall require any such Cultural Entities that receive any such funds to make all reasonable efforts to use such funds in ways intended to feature or enhance tourism, public transportation, and the overall objectives and goals of this Agreement. The parties acknowledge that funding under this agreement is intended to be in addition to funding presently available to one or more Cultural Entities regardless of the source thereof and is not intended to supplant, replace, or result in a reduction of any such funding. Neither party shall

be deemed to have breached this agreement because of any alteration in third-party funding of a Cultural Entity unless such an alteration is induced by the act of that party.

4.2 The ENMNOEHA-Transit Fund. In recognition of this cooperative endeavor and the many interrelationships between the transportation and hospitality industries, and the transit and transit-related purposes of the RTA, NOTMC shall each year allocate and dedicate a sum in dollars equal to fifty (50%) percent of the Annual Fee paid by the RTA to NOTMC hereunder (the "Expansion Payment") to a special trust fund or special interest bearing account, to be known as the "Morial Convention Center Expansion Transit Fund" (the "ENMNOEHA-Transit Fund"), which shall be evidenced by appropriate agreements and other instruments intended to assure the separate maintenance of the designated funds and interest thereupon from all other funds of NOTMC. All funds paid into the ENMNOEHA-Transit Fund and all of the increases, interests, and earnings thereof shall be maintained, used, and/or expended solely for the benefit of the Phase IV Convention Center expansion project administered by ENMNOEHA, pursuant to the terms and conditions of a written escrow agreement to be entered into among the RTA, NOTMC, and ENMNOEHA and approved by the Mayor of the City of New Orleans (the "Phase IV Escrow Fund Agreement"). The Phase IV Escrow Fund Agreement shall provide that expenditures from the ENMNOEHA-Transit Fund shall be made for purposes that are consistent with and conducive to the promotion and enhancement of the tourism, convention and hospitality industry-related and transit and transit-related purposes of this Agreement. Notwithstanding the foregoing, in the event that ENMNOEHA determines that the proposed Phase IV expansion project is not

feasible, or that ENMNOEHA cannot or will not enter into the proposed Phase IV Escrow Fund Agreement, then in such an event, the Executive Vice President of NOTMC shall provide ENMNOEHA, the RTA and the Mayor with at least thirty (30) days prior written notice and certification that the proposed release and payment of said monies will be made pursuant to the intent and purposes of this Agreement. After said notice and valid certification and the passing of thirty (30) days, NOTMC shall be entitled to withdraw the funds from the Interim Fund and thereafter retain the funds thus withdrawn and all the Expansion Payment funds for itself, and to expend them to promote tourism for the City of New Orleans in accordance with the tourism, convention, hospitality and transit and transit-related purposes and the obligations of NOTMC under this Agreement, pursuant to a budget approved by the City and otherwise as required by contract or law.

4.3 Interim Fund. Until such time as the contemplated Phase IV Escrow Fund Agreement has been entered into among the RTA, NOTMC, and ENMNOEHA and approved by the Mayor of the City of New Orleans (the "Mayor"), the Expansion Payment shall be deposited by NOTMC into an interest bearing account in a federally-insured depository bank in the City of New Orleans bearing the name "Special Convention Center Expansion Transit Fund" (the "Interim Fund"). Prior to the confection of the Phase IV Escrow Fund Agreement, NOTMC may transfer all or any portion of the Interim Fund to a different or other federally-insured depository bank(s) in the City of New Orleans, or another depository approved by the RTA, ENMNOEHA and the Mayor. NOTMC shall furnish the RTA, ENMNOEHA and the Mayor with information regarding the Interim Fund, including the account numbers and account balances, as and when requested. No funds may be

expended or withdrawn from the Interim Fund for any purpose except as authorized and provided in the Phase IV Escrow Fund Agreement. Notwithstanding the foregoing, in the event that ENMNOEHA determines that the proposed Phase IV expansion project is not feasible, or that ENMNOEHA cannot or will not enter into the proposed Phase IV Escrow Fund Agreement, then in such an event, the Executive Vice President of NOTMC shall provide ENMNOEHA, the RTA and the Mayor with at least thirty (30) days prior written notice and certification that the proposed release and payment of said monies will be made pursuant to the intent and purposes of this Agreement. After said notice and valid certification and the passing of thirty (30) days, NOTMC shall be entitled to withdraw the funds from the Interim Fund and thereafter retain the funds thus withdrawn and all the Expansion Payment funds for itself, and to expend them to promote tourism for the City of New Orleans in accordance with the tourism, convention, hospitality and transit and transit-related purposes and the obligations of NOTMC under this Agreement, pursuant to a budget approved by the City and otherwise as required by contract or law. Any dispute as to the granting or validity of such written certification or of NOTMC's right to withdraw funds from the Interim Fund and retain the Expansion Payment funds shall be submitted first for mediation by the Mayor of the City of New Orleans, if he or she agrees to accept the role of mediator, prior to recourse in the Courts.

4.4 Phase IV Escrow Fund Agreement. The Phase IV Escrow Fund Agreement shall provide for the following matters with respect to NOTMC's receipt of the Expansion Payment, and the use and purpose of the ENMNOEHA-Transit Fund, as well as any additional matters which are agreed upon among the parties and which do not conflict with

the terms and conditions of this Agreement and serve to advance the transit and transit-related purposes of this Agreement:

- A. Use of the funds. The permitted uses of the funds are for financing or funding of actual physical construction costs (labor and materials) of new capital facilities and/or capital improvements of Phase IV, and particularly including the need for access to the RTA's Riverfront Streetcar and shuttle-bus services and the transportation needs of Convention Center attendees and the public, consistent with the needs of ENMNOEHA and the legal requirements for the use of the RTA Tax (Hotels);
- B. Administration of the ENMNOEHA-Transit Fund. How and by whom the fund will be administered and controlled, including: (i) the selection of depository, (ii) minimum requirements for any depository, (iii) the use and application of principal and interest or other earnings, (iv) accounting and accountability, (v) selection and qualifications of fund administrator or trustee, and (vi) procedures and required documentation with respect to the expenditure of funds;
- C. Recognition. In consideration of the difficulty of financing each phase of Convention Center expansion, due and proper recognition shall be provided by the parties in dealing with various public and private agencies, including the State of Louisiana, which attributes and gives the City of New Orleans credit for the payment of the Expansion Payment into the fund, toward the City's contribution to the proposed Phase IV expansion project. It shall also be stated,

in any other agreements between the NOTMC and ENMNOEHA which relate to the Expansion Payment or Phase IV, that all monies paid out of the fund shall be credited to the Orleans Parish share of any funding and/or financing arrangements for the Phase IV project.

- D. Bonding. ENMNOEHA's overall financing and bonding needs and requirements shall also be taken into consideration and appropriate provisions shall be included, to the extent allowed by law or not otherwise inconsistent with the terms and conditions of this Agreement, in order to assist or facilitate ENMNOEHA's Phase IV financing and/or bonding needs.

4.5 In addition, the NOTMC agrees that it shall:

- A. Conduct all operations, promotions, and related affairs in complete compliance with the provisions of this Agreement and with all laws, ordinances, and regulations applicable to it.
- B. Designate one of its officers or executives as its liaison to the RTA for the purpose of promoting clarity, efficiency and convenience in communications.
- C. Regularly consult and consider the advice of the designated liaison person of the RTA.
- D. Upon the RTA's request, render quarterly written reports or other appropriate information to the RTA setting forth details of the material operations and activities which NOTMC engages in pursuant to this Agreement.

V.

OBLIGATIONS OF THE RTA

5.1 In consideration of the services rendered by NOTMC and the undertakings of NOTMC hereunder, the RTA shall do the following things and make the payments specified below to NOTMC:

- A. Through its Chairman of the Board, after consultation with the Mayor of the City of New Orleans and members of the RTA Board of Commissioners, designate a liaison and key contact person to represent the RTA in its dealings with the NOTMC, ENMNOEHA, and other tourism and convention industry agencies, public and private; and
- B. Pay to the NOTMC annual contract fees as follows:
 - 1) The Annual Fee shall be paid in each Contract Year in four quarterly installments, each of which shall be a sum in dollars equal to the Primary Portion and (if any) the Additional Portion for the preceding quarter of the RTA Tax (Hotels) revenues actually received by the RTA. Said quarterly payments for each quarter of the Contract Year shall be made by the RTA to the NOTMC on or before the fifteenth (15th) day following RTA's having actually received from the tax collectors all of the RTA Tax (Hotels) revenues paid to the City with respect to the pertinent quarterly period, which dates are currently anticipated to fall on each of the following dates:
 - a) for determining the date of the first quarterly payment: the date on which the RTA shall actually have received its remittance from the City

- tax collectors of RTA sales and use taxes reported and paid to the City in the fourth month of the Contract Year;
- b) for determining the date of the second quarterly payment: the date on which the RTA shall actually have received its remittance from the City tax collectors of RTA sales and use taxes reported and paid to the City in the seventh month of the Contract Year ;
 - c) for determining the date of the third quarterly payment: the date on which the RTA shall actually have received its remittance from the City tax collectors of RTA sales and use taxes reported and paid to the City in the tenth month of the Contract Year ;
 - d) for determining the date of the fourth quarterly payment: the date on which the RTA shall actually have received its remittance from the City tax collectors of RTA sales and use taxes reported and paid to the City in the first month of the next following Contract Year; and
- 2) In each Contract Year in that quarter thereof, if any, in which the cumulated total of the RTA Tax (Hotels) revenues actually received to date by the RTA from City tax collectors exceeds the threshold sum of \$7,200,000.00 dividing the base for calculation of the Primary Portion from the base for calculation of the Additional Portion, the portion of that quarter's RTA Tax (Hotels) revenues which constitutes part of the base for calculating the Primary Portion shall be multiplied by a factor of .40 to determine the amount of that quarter's Primary Portion payment, and the portion of that quarter's RTA Tax (Hotels) revenues that

exceeds said threshold amount for that Contract Year shall be treated as part of the base for calculation of the Additional Portion and shall be multiplied by a factor of .60 to determine the Additional Portion payment due for that quarter. Thereafter, in that Contract Year, all additional RTA Tax (Hotels) revenues actually received by the RTA from the City tax collectors shall be treated as part of the base for calculation of the Additional Portion payment(s), if any, to be paid in the remaining quarters, if any, of that Contract Year.

- C. Dedicate and appropriate annually to capital improvements, capital asset expenditures, and/or repairs and maintenance of its streetcar and/or light rail transportation facilities a sum in dollars equal to the RTA Tax (Hotels) revenues actually received by the RTA, less a sum equal to all payments which the RTA pays to NOTMC pursuant to this Agreement in that year; and
- D. For the purposes of this Agreement, the following terms shall have the following meanings:
 - 1) "Annual Fee" shall mean the total amount payable by the RTA to NOTMC per Contract Year hereunder, comprised of the Primary Portion and the Additional Portion, if any.
 - 2) "Primary Portion" shall mean a sum equal to forty (40%) percent of the first Seven Million Two Hundred-Thousand (\$7,200,000.00) Dollars of the RTA Tax (Hotels) actually received by the RTA for each Contract Year, not to exceed a maximum of Two Million Eight Hundred and Eighty Thousand (\$2,880,000.00) Dollars.

3) "Additional Portion" shall mean a sum equal to sixty (60%) percent of the total RTA Tax (Hotels) actually received by the RTA for each Contract Year in excess of the first Seven Million Two Hundred-Thousand (\$7,200,000.00) Dollars of such RTA Tax (Hotels) received by the RTA for each such Contract Year. The Additional Portion, if any, to be paid to NOTMC shall be in addition to the Primary Portion.

4) "Contract Year" shall mean a period of twelve (12) consecutive calendar months, with the first full Contract Year (for the purpose of calculating the dates on which payments are due), commencing on the first day of January 2000. Each Contract Year thereafter shall commence on the first day of each next Calendar Year however, notwithstanding the commencement of the first Contract Year on January 1, 2000 (for purpose of calculating the dates on which payments shall be due), nothing in this definition shall be deemed to alter the meaning of any other provision of this Agreement, the sole purpose of commencing the first Contract Year prior to August 1, 2000 being to make each Contract Year co-terminus with each Calendar Year, and not to create or impose any obligations prior to August 1, 2000 upon any person, firm, corporation or legal entity.

VI.

OWNERSHIP, RESPONSIBILITIES AND LIABILITIES

6.1 Intellectual Property. RTA acknowledges NOTMC's proprietary rights in and to all trademarks, trade names, marketing information, databases, symbols, and other forms of intellectual property belonging to NOTMC and agrees to use such property only to the

extent, and in the form in which, it is registered or permitted by NOTMC hereunder. RTA shall not adopt, use, or register any words, phrases, or symbols which are identical to or confusingly similar to any item of NOTMC's intellectual property.

6.2 Upon termination of this Agreement, all rights and obligations created or conferred upon RTA by way of this Agreement shall revert to NOTMC. Accordingly, upon request of NOTMC and upon identification of such property by NOTMC, RTA promptly shall cease to exploit all NOTMC property including intellectual property supplied or furnished during the term of this Agreement, and RTA shall (except as otherwise required by law) promptly return or, at NOTMC's option, destroy all NOTMC property which RTA may possess, including drawings/specifications, signs, stationery, advertising materials, sales literature, and all other tangible materials bearing NOTMC's name and/or trademark(s), or in any other way connected with NOTMC. Nothing in this Agreement shall at any time deprive the RTA of the right to use its name, acronym, logos, symbols, and/or images of RTA facilities in any lawful and appropriate way, notwithstanding the fact that the same may have been used by NOTMC in the performance of its obligations under this Agreement.

6.3 The parties (RTA and NOTMC) each agree that they are not partners or joint venturers with each other nor with any person or entity named herein, and that the RTA shall not acquire an ownership interest in the NOTMC nor in any improvements, fixtures, equipment, furniture, or other property acquired by any other person or entity as a result of any provisions of the Agreement. Neither party shall be liable under the Agreement for any debt or obligation of the other party or of any third party. NOTMC shall be solely responsible, subject to any limitations imposed or provided by the laws of the State of

Louisiana governing economic development corporations, for any and all debts, and obligations and liabilities of NOTMC and any and all debts, obligations, and/or liabilities arising out of or associated with the actions and operations of the NOTMC pursuant to this Agreement.

6.4 The Annual Fee and any other monies paid by the RTA to the NOTMC hereunder shall immediately become the funds of the NOTMC upon receipt, and such funds shall not be, and shall not be considered the funds of the RTA.

6.5 The NOTMC and the RTA agree and stipulate that payments to be made to or by either party or to any person or fund herein named shall be calculated on the bases set forth in this Agreement but may be made using funds derived from any lawful source of revenue, and that, unless otherwise specifically provided to the contrary herein, that nothing in this Agreement shall be construed as requiring funds from any one particular source to be used to make payments required to be made by or to either party to the Agreement or any third-person or fund named herein.

6.6 Nothing in this Agreement shall be construed as giving the RTA or its agents a role in or control or supervision of the manner in which NOTMC fulfills its obligation under this Agreement. The NOTMC shall plan and conduct all promotional activities required by this Agreement in ways determined in its reasonable discretion but in full compliance with all of the provisions of this Agreement.

All decisions as to the appropriate content, direction, form, style and conduct of any particular program, promotion or production shall be made solely by the NOTMC provided that the over-all programs, promotions, and productions of NOTMC in each Contract Year shall be

reasonable and in compliance with the provisions of this Agreement. Subject to the requirement of such over-all compliance, nothing in this Agreement shall oblige the NOTMC to include attention to the RTA and/or its facilities or services in any particular program, promotion or production, if the NOTMC reasonably determines such attention would be inappropriate and that over-all full compliance with its obligations under this Agreement can be accomplished without such attention.

6.7 The NOTMC shall exercise the prudence of a reasonably prudent administration with respect to all funds in the Interim Fund and ENMNOEHA-Transit Fund and said funds when feasible shall be invested in a federally-insured depository bank in the City of New Orleans in order to obtain the maximum rate of return reasonably available at a level of risk acceptable to such a prudent administrator.

VII.

TERM AND TERMINATION

7.1 Term. This Agreement shall commence on the first day of the month immediately following the entry of the Final Judgment in the Mandamus/Declaratory Suit and shall remain in effect for as long as the RTA collects the RTA Tax (Hotels) as provided in the Final Judgment and Decree, unless terminated "for cause" for violation of a material obligation as provided in Section 7.2 of this Agreement.

7.2 Termination "for cause". As used herein, breach of a material obligation is understood to mean any failure of a party to carry out all or part of its substantive obligations under this Agreement such that the other party is substantially deprived of what it is reasonably entitled to expect under this Agreement, unless such performance is prevented by

strikes, war, Acts of God, or similar circumstances not reasonably within the control of said party. Either party may terminate said Agreement for valid cause by written notice to the other not less than sixty (60) days in advance. If this Agreement has remained in force for more than two (2) years, the notice period to terminate for valid cause shall be a minimum of ninety (90) days. The end of any notice period must coincide with the end of a calendar month.

7.3 Notice of Default/Right to Cure. In case of a substantial breach of the other party's material obligations under this Agreement, the offended party shall furnish the other party with written notice of default, and reasons therefor, and shall allow the other party at least thirty (30) days time following actual receipt of notice to cure said default, or to commence the cure of said default if the default can not be cured within thirty (30) days time despite reasonable, good faith efforts, diligently pursued. In the event that said act of default has not been cured within thirty (30) days time to cure said default, or if the offending party has not commenced the cure of said default if the default can not be cured within thirty (30) days time and diligently pursued the cure thereafter, then the offended party may terminate this Agreement by written notice to the offending party.

7.4 Remedies for Breach. If either party fails to fulfill in a timely and proper manner its material obligations under this Agreement, or violates any of the material covenants, agreements, or stipulations of the Agreement, the aggrieved and/or the non-violating party shall thereupon have the option to: A) seek to enforce specific performance of the provisions of the Agreement, and/or may seek an award of damages as a remedy for any material breach of the Agreement by the other party, subject to the limitations set forth in this Article, or B)

terminate the Agreement after giving written notice to the other party of such default, providing the opportunity to cure, and notice of termination as provided herein. Upon any such termination this Agreement shall then be deemed terminated and shall have no further legal force and effect as of the date in the final notice of termination.

VIII.

RELATIONSHIP BETWEEN THE PARTIES

8.1 No provision of the Agreement is intended to create nor shall it be deemed or construed to create any relationship between the parties other than that of independent contracting parties acting pursuant to a cooperative endeavor agreement under La. Const. (1974), Article 6, Section 20 and Article VII, Section 14(C).

IX.

AMENDMENTS TO THE AGREEMENT

9.1 This Agreement may be amended at any time by a written document that makes specific reference to this Agreement and is signed by representatives of both of the parties by virtue of resolutions adopted by the respective board of each party.

X.

GOVERNING LAW

10.1 This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Louisiana and the Ordinances of the Parish of Orleans, to the exclusion of the laws of any other forum.

10.2 The parties acknowledge that the confection of this Agreement is made in part as a result of the settlement and/or resolution of the Mandamus/Declaratory Suit and the

entry of the Final Judgment. Any civil action concerning any dispute arising under this Agreement or regarding its interpretation or validity shall be instituted in the Civil District Court for the Parish of Orleans, State of Louisiana, and shall be brought before the Court as a matter of continuing jurisdiction as a result of the matter entitled "Regional Transit Authority v. Marina Kahn, et al.", bearing docket No. 99-11874 "T", referred to as the "Mandamus/Declaratory Suit" herein. In the event that either party is required to engage an attorney to enforce its rights under this Agreement, said party shall be entitled to recover its costs and reasonable attorney's fees incurred in order to enforce its rights hereunder.

XI.

ASSIGNABILITY

11.1 Neither party may assign the rights, duties and/or obligations under the Agreement, either in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably or untimely withheld. Notwithstanding the foregoing, NOTMC may engage independent contractors to assist NOTMC with the performance of its duties or obligations hereunder, similar in nature to NOTMC's established business practices prior to the commencement hereof or as otherwise established by NOTMC during the term hereof with respect to NOTMC's rendering of services involving the engagement of agencies or contractors to assist NOTMC in performing its services for the City of New Orleans.

XII.

CAUSES BEYOND CONTROL

12.1 Neither party shall be responsible in damages for delays or failure in performance resulting from acts beyond the control of a party. Such acts shall include, but not be limited to, Acts of God, strikes, riots, Acts of War, epidemics, statutes, judicial interpretations of statutes, and/or governmental regulations superimposed after the fact, fire, communication line failures not reasonably foreseeable, power failures not reasonably foreseeable, earthquakes, or other natural disasters, including any act caused by or related to a Y2K failure and/or malfunction.

XIII.

INVALIDITY OR UNENFORCEABILITY

13.1 The invalidity or unenforceability of any terms or conditions of this Agreement shall in no way affect the validity or enforceability of any other of its terms or provisions. In the event that any of the terms of this Agreement conflict with a rule of law or statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement but such invalidity or unenforceability shall not invalidate any other terms of this Agreement. The foregoing shall not apply where invalidity or unenforceability of such provisions does substantial violence to the remainder of this Agreement.

XIV.

LIAISON

14.1 Each party shall designate one or more persons who shall act as a point of contact with the other party to facilitate the expeditious and felicitous execution of the Agreement. The RTA agrees that Ms. Sandra Shilstone shall serve as NOTMC's primary liaison hereunder until further notice by NOTMC.

XV.

PERSONNEL

15.1 Personnel or contractors engaged or assigned by NOTMC to perform the services required under this Agreement shall be qualified to perform such assigned duties and NOTMC will determine which personnel shall be assigned for any particular project.

15.2 NOTMC assumes and/or retains the responsibility for its personnel or contractors assigned to provide the services required hereunder and, with respect to employees, will make all necessary deductions for social security and withholding taxes, contributions for employment compensation funds, and shall maintain at its expense all necessary insurance for its employees including, but not limited to, worker's compensation coverage.

XVI.

EQUAL OPPORTUNITY

16.1 NOTMC shall comply with the requirements of Title VII of the Civil Rights Act of 1964, and other applicable laws, rules and regulations; and NOTMC agrees that it shall not discriminate against employees, contractors, or applicants for employment or contracts due to

race, color, creed, religion, sex, gender identification, sexual orientation, age, ancestry, national origin, physical condition, or disability.

XVII.

WAIVER OF BREACH

17.1 The waiver by any party of a breach or violation of any provision of the Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the Agreement.

XVIII.

NOTICE

18.1 Any notice, demand, communication or payment required under the Agreement shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, to the Chief Executive Officer or Executive Director or Deputy Director of a party at its principal place of business as listed in Section 18.2 below or to such other address and to the attention of such other person as either party may designate by written notice.

18.2 The principal place of business of each party hereto is as follows:

Regional Transit Authority
6700 Plaza Drive
New Orleans, Louisiana 70127

The New Orleans Tourism Marketing Corporation
Attn. Executive Vice President
365 Canal Street, Suite 1120
New Orleans, Louisiana 70124